

exchange of exhibits to be introduced at the hearing, and a list of witnesses that may be called at the hearing.

(2) Each party must sign the original joint schedule to be filed with the Enforcement Docket Clerk.

(c) *Time.* The parties may agree to submit all prehearing motions and responses and may agree to close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than 15 days before the hearing.

(d) *Order establishing joint schedule.* The ALJ must approve the joint schedule filed by the parties. One party must submit a draft order establishing a joint schedule to the ALJ to be signed by the ALJ and filed with the Enforcement Docket Clerk.

(e) *Disputes.* The ALJ must resolve disputes regarding discovery or disputes regarding compliance with the joint schedule as soon as possible so that the parties may continue to comply with the joint schedule.

(f) *Sanctions for failure to comply with joint schedule.* If a party fails to comply with the ALJ's order establishing a joint schedule, the ALJ may direct that party to comply with a motion or discovery request or, limited to the extent of the party's failure to comply with a motion or discovery request, the ALJ may do the following:

(1) Strike that portion of a party's pleadings.

(2) Preclude prehearing or discovery motions by that party.

(3) Preclude admission of that portion of a party's evidence at the hearing.

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

**§ 1503.629 Motions.**

(a) *General.* A party applying for an order or ruling not specifically provided in this subpart must do so by motion. A party must comply with the requirements of this section when filing a motion. A party must serve a copy of each motion on each party.

(b) *Form and contents.* A party must state the relief sought by the motion and the particular grounds supporting that relief. If a party has evidence in support of a motion, the party must at-

tach any supporting evidence, including affidavits, to the motion.

(c) *Filing of motions.* A motion made prior to the hearing must be in writing or orally on the record. Unless otherwise agreed by the parties or for good cause shown, a party must file any prehearing motion, and must serve a copy on each party, not later than 30 days before the hearing. Motions introduced during a hearing may be made orally on the record unless the ALJ directs otherwise.

(d) *Reply to motions.* Any party may file a reply, with affidavits or other evidence in support of the reply, not later than 30 days after service of a written motion on that party. When a motion is made during a hearing, the reply may be made at the hearing on the record, orally or in writing, within a reasonable time determined by the ALJ. At the discretion of the ALJ, the moving party may file a response to the reply.

(e) *Rulings on motions.* The ALJ must rule on all motions as follows:

(1) *Discovery motions.* The ALJ must resolve all pending discovery motions not later than 10 days before the hearing.

(2) *Prehearing motions.* The ALJ must resolve all pending prehearing motions not later than 7 days before the hearing. If the ALJ issues a ruling or order orally, the ALJ must serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the ALJ must issue rulings and orders in writing and must serve a copy of the ruling or order on each party.

(3) *Motions made during the hearing.* The ALJ may issue rulings and orders on motions made during the hearing orally. Oral rulings or orders on motions must be made on the record.

(f) *Specific motions.* A party may file, but is not limited to, the following motions with the Enforcement Docket Clerk:

(1) *Motion to dismiss for insufficiency.* A respondent may file a motion to dismiss the complaint for insufficiency instead of filing an answer. If the ALJ denies the motion to dismiss the complaint for insufficiency, the respondent must file an answer not later than 20 days after service of the ALJ's denial of the motion. A motion to dismiss the

complaint for insufficiency must show that the complaint fails to state a violation of a TSA requirement. If the ALJ grants the motion to dismiss the complaint for insufficiency, the agency attorney may amend the complaint in accordance with § 1503.621.

(2) *Motion to dismiss.* A party may file a motion to dismiss, specifying the grounds for dismissal. If an ALJ grants a motion to dismiss in part, a party may appeal the ALJ's ruling on the motion to dismiss under § 1503.631(b).

(i) *Motion to dismiss a request for a hearing.* An agency attorney may file a motion to dismiss a request for a hearing as untimely instead of filing a complaint. If the motion to dismiss is not granted, the agency attorney must file the complaint and must serve a copy of the complaint on each party not later than 20 days after service of the ALJ's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the respondent may file an appeal pursuant to § 1503.657. If required by the decision on appeal, the agency attorney must file a complaint and must serve a copy of the complaint on each party not later than 30 days after service of the decision on appeal.

(ii) *Motion to dismiss a complaint.* A respondent may file a motion to dismiss a complaint instead of filing an answer, on the ground that the complaint was not timely filed or on other grounds. If the ALJ does not grant the motion to dismiss, the respondent must file an answer and must serve a copy of the answer on each party not later than 30 days after service of the ALJ's ruling or order on the motion to dismiss. If the ALJ grants the motion to dismiss and the proceedings are terminated without a hearing, the agency attorney may file an appeal pursuant to § 1503.657. If required by the decision on appeal, the respondent must file an answer and must serve a copy of the answer on each party not later than 20 days after service of the decision on appeal.

(iii) *Motion to dismiss based on settlement.* A party may file a motion to dismiss based on a mutual settlement of the parties.

(3) *Motion for more definite statement.* A party may file a motion for more

definite statement of any pleading that requires a response under this subpart. A party must set forth, in detail, the indefinite or uncertain allegations contained in a complaint or response to any pleading and must submit the details that the party believes would make the allegation or response definite and certain.

(i) *Complaint.* A respondent may file a motion requesting a more definite statement of the allegations contained in the complaint instead of filing an answer. If the ALJ grants the motion, the agency attorney must supply a more definite statement not later than 15 days after service of the ruling granting the motion. If the agency attorney fails to supply a more definite statement, the ALJ must strike the allegations in the complaint to which the motion is directed. If the ALJ denies the motion, the respondent must file an answer and must serve a copy of the answer on each party not later than 20 days after service of the order of denial.

(ii) *Answer.* An agency attorney may file a motion requesting a more definite statement if an answer fails to respond clearly to the allegations in the complaint. If the ALJ grants the motion, the respondent must supply a more definite statement not later than 15 days after service of the ruling on the motion. If the respondent fails to supply a more definite statement, the ALJ must strike those statements in the answer to which the motion is directed. The respondent's failure to supply a more definite statement may be deemed an admission of unanswered allegations in the complaint.

(4) *Motion to strike.* Any party may move to strike any insufficient allegation or defense, or any redundant, immaterial, or irrelevant matter in a pleading. A party must file a motion to strike before a response is required under this subpart or, if a response is not required, not later than 10 days after service of the pleading.

(5) *Motion for decision.* A party may move for decision, regarding all or any part of the proceedings, at any time before the ALJ has issued an initial decision in the proceedings. A party may include with a motion for decision affidavits as well as any other evidence in

support of the motion. The ALJ must grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, affidavits, matters that the ALJ has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. The party moving for decision has the burden of showing that there is no genuine issue of material fact.

(6) *Motion for disqualification.* A party may file the motion at any time after the ALJ has been assigned to the proceedings but must make the motion before the ALJ files an initial decision in the proceedings.

(i) *Motion and supporting affidavit.* A party must state the grounds for disqualification, including, but not limited to, personal bias, pecuniary interest, or other factors supporting disqualification, in the motion for disqualification. A party must submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) *Answer.* A party must respond to the motion for disqualification not later than 5 days after service of the motion for disqualification.

(iii) *Decision on motion for disqualification.* The ALJ must render a decision on the motion for disqualification not later than 20 days after the motion has been filed. If the ALJ finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the ALJ must withdraw from the proceedings immediately. If the ALJ finds that disqualification is not warranted, the ALJ must deny the motion and state the grounds for the denial on the record. If the ALJ fails to rule on a party's motion for disqualification within 20 days after the motion has been filed, the motion is deemed granted.

(iv) *Appeal.* A party may appeal the ALJ's denial of the motion for disqualification in accordance with § 1503.631(b).

[74 FR 36039, July 21, 2009, as amended at 75 FR 58333, Sept. 24, 2010]

**§ 1503.631 Interlocutory appeals.**

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the ALJ to the TSA decision maker until the initial decision has been entered on the record. A decision or order of the TSA decision maker on the interlocutory appeal does not constitute a final order of the Administrator for the purposes of judicial appellate review under 49 U.S.C. 46110.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause with the ALJ, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the ALJ issues a decision on the request. If the ALJ grants the request, the proceedings are stayed until the TSA decision maker issues a decision on the interlocutory appeal. The ALJ must grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) *Interlocutory appeals of right.* If a party notifies the ALJ of an interlocutory appeal of right, the proceedings are stayed until the TSA decision maker issues a decision on the interlocutory appeal. A party may file an interlocutory appeal, without the consent of the ALJ, before an initial decision has been entered in the following cases:

(1) A ruling or order by the ALJ barring a person from the proceedings.

(2) Failure of the ALJ to dismiss the proceedings in accordance with § 1503.623.

(3) A ruling or order by the ALJ in violation of § 1503.607(b).

(4) A ruling or order by the ALJ regarding public access to a particular docket or documents.

(d) *Procedure.* Not later than 10 days after the ALJ's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the ALJ's decision granting an interlocutory appeal for cause, a party must file a notice of interlocutory appeal, with supporting documents, and the party must serve a copy of the notice and supporting documents on each party. Not later than 10 days after service of the appeal brief, a party must file a